Roslim bin Harun v Public Prosecutor

SUPREME COURT (IPOH) — CRIMINAL APPEAL NO 05–38–93
ABDUL HAMID OMAR LP, EDGAR JOSEPH JR, MOHAMED DZAIDDIN SCJJ
2 APRIL 1994

Criminal Law *— Drug trafficking — Chemist report — Whether report suffered from infirmities — Whether sufficiently proved that subject matter of the charge was cannabis within the meaning of s 2 of the Dangerous Drugs Act 1952 — Dangerous Drugs Act 1952 s 2*

The appellant was convicted for trafficking in dangerous drugs in contravention of s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act') and was sentenced to death. The appellant has appealed. The only point of concern to the Supreme Court was whether it was sufficiently proved that the subject matter of the charge was cannabis within the meaning of s 2 of the Act.

Held, dismissing the appeal:
Leong Bon Huat v PP[1] can be distinguished as in this case, the evidence of the chemist did not suffer from any of the infirmities referred to in *Leong Bon Huat*'s case.[1] The court therefore had no hesitation in concluding that the subject matter of the charge was cannabis within the meaning of s 2 of the Act.

[Bahasa Malaysia summary

Perayu telah disabit kerana mengedar dadah berbahaya melanggar s 39B(1)(a) Akta Dadah Berbahaya 1952 ('Akta itu') dan telah dihukum mati. Perayu telah membuat rayuan. Satu-satunya perkara yang membimbangkan mahkamah adalah sama ada telah dibuktikan dengan mencukupi bahawa perkara dakwaan itu adalah ganja mengikut maksud s 2 Akta itu.

Diputuskan, menolak rayuan itu:
Leong Bon Huat v PP[1] boleh dibezakan kerana di dalam kes ini, tidak terdapat kecacatan di dalam keterangan ahli kimia seperti yang terdapat di dalam kes *Leong Bon Huat.*[1] Oleh itu, mahkamah tidak teragak-agak untuk membuat keputusan bahawa perkara dakwaan itu merupakan ganja di dalam maksud s 2 Akta itu.]

Case referred to
1 *Leong Bon Huat v PP* [1993] 3 MLJ 11 (distd)

Appeal from: Criminal Trial No 58–8–92 (High Court, Taiping)

A *K Kumaraendran* (*MM Athimulan a/l Muruthiah* with him) (*Kumar Sitham & Co*) for the appellant.

Abdul Gani Patail (Deputy Public Prosecutor) for the respondent.

Edgar Joseph Jr SCJ (delivering the grounds of judgment of the court):

B This appellant was convicted for trafficking, on his own behalf, in a dangerous drug, to wit, 1.5kg of cannabis comprised in 2,700 rolls of dried plant material, in contravention of s 39B(1)(a) of the Dangerous Drugs Act 1952, and sentenced to death in the High Court at Taiping before Abdul Malik Ishak JC sitting alone.

Subject to proof beyond a reasonable doubt that the subject matter of the

C charge was cannabis within the meaning of s 2 of the Act — a point which we shall be discussing in a moment — there was evidence, which if it was believed, made out the guilt of the appellant.

There was evidence by the appellant to the contrary; his evidence being that at all material times, he was a police informer, assisting the police in

D collecting evidence to expose or flush out members of a drug syndicate operating in the Taiping area, including a certain Khalid. In furtherance of this purpose, on the date and at the time and place stated in the charge, he had posed as a supplier in drug dealing transactions with a person he believed to be a buyer of the cannabis, the subject matter of the charge, but who, unbeknown to him then, and as events turned out, was really a police

E officer cast in the role of an agent provocateur, and that despite this, the police had pulled a double-cross on him by framing a case against him. In other words, the appellant was saying that this was a case of the would be biter being bitten or the biter bit, to quote the idiom which is the moral of Aesop's fable, 'The Viper and the File'.

F When we interrupted counsel for the appellant and asked him whether he could suggest any possible reason why the police should have done such a vicious thing to the appellant and, indeed, a thing which would be against the interest of the police since it might well have resulted in the drying up of other sources of information in the future, he was at a complete loss to answer our query.

G In a long and careful judgment with which we could find no fault, the judge carefully weighed the evidence adduced by the defence and arrived at the conclusion that it raised no reasonable doubt either as to the truth of the case for the prosecution or the guilt of the appellant. Such criticisms as were levelled at the judgment by counsel for the appellant amounted to no more

H than that it was not as favourable to the appellant as counsel would have liked it to have been.

We must now return to the only point which caused us some concern and this revolved around the question whether it was sufficiently proved that the subject matter of the charge was cannabis within the meaning of s 2 of the Act. In support of his submission regarding this part of the case,

I counsel relied heavily on a recent judgment of the Supreme Court in the case of *Leong Bon Huat v PP*.[1] In that case, the accused had been convicted for trafficking in a dangerous drug, to wit, cannabis weighing 793.85g,

contained in a bulk of dried leaves. The evidence of the chemist in that case suffered from many infirmities which are conveniently summarized in the following passage in the judgment at p 14C–D and which reads as follows:

> It will be seen that he [the chemist] made no mention of the results of his physical examination; for example, he did not say that the plant material was all of the same type and physical features as that of cannabis, nor did he say what were the results of his microscopic examination. Did he notice any resin in the plant material? If so, in what quantity was it present? Nor did he tell the court as to what were the tests he conducted using chemical methods; for example, did he resort to the Duquenois Levine test and/or the thin layer chromatography test? If so, what were the results of those tests?

In the event, the court concluded that the samples of the plant material upon which the chemist had carried out the chemical tests are inadequate, having regard to the total weight of the plant material and accordingly quashed the conviction and substituted a conviction for possession of cannabis under s 39A of the Act.

We had carefully read and re-read the evidence of the chemist in the present case with a critical eye and are completely convinced that it does not suffer from any of the infirmities referred to in *Leong Bon Huat*'s case,[1] and so we had no hesitation in concluding that it was sufficiently proved that the subject matter of the charge was cannabis within the meaning of s 2 of the Act. In these circumstances, *Leong Bon Huat*'s case[1] was readily distinguishable on the facts.

Accordingly, we felt compelled to dismiss the appeal and to confirm the conviction and sentence of death passed against the appellant.

Appeal dismissed.

Reported by Prof Ahmad Ibrahim